

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION—DIVISION OF WATER QUALITY  
JUNE 19, 2007**

**ITEM 6**

**SUBJECT**

CONSIDERATION OF A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR DESIGNEE TO ENTER INTO A JOINT POWERS AGREEMENT TO CREATE THE AQUATIC SCIENCE CENTER

**DISCUSSION**

The California Government Code relating to the joint exercise of powers common to public agencies allows two or more public entities to create a separate public entity Joint Powers Authority (JPA) that allows signatories to more efficiently deliver services that meet the needs of the people they serve. A joint powers agreement between the originating public agencies specifies the powers and governance of the JPA.

The San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) adopted Resolution No. R2-2006-0051 requesting that the State Water Resources Control Board (State Water Board) join with Bay Area Clean Water Agencies (BACWA) in establishing a JPA to be named the Aquatic Science Center. The purpose of the Aquatic Science Center will be the promotion and delivery of science support functions and information management for governmental and non-governmental organizations with roles in water quality protection, policy development, and assessment. The Aquatic Science Center will be administered by the San Francisco Estuary Institute (SFEI). The role that SFEI will play is similar to the work they do in managing the San Francisco Bay Regional Monitoring Program and providing scientific support for implementation of the San Francisco Estuary Project Comprehensive Conservation and Management Plan. With SFEI administering the JPA, the State and Regional Water Quality Control Boards will be able to more efficiently utilize our Total Maximum Daily Load (TMDL), monitoring, and assessment contract resources; strengthen the integration of regional monitoring information generated through a variety of efforts; and collaborate on projects with other State or local entities. As we embark on the many challenges of implementing TMDLs, the Aquatic Science Center can serve as a forum and mechanism to refine and use adaptive management principles in water quality protection and restoration by tightly connecting science to decision-making processes involving a broad array of stakeholders.

**POLICY ISSUE**

Shall the State Water Board enter into a joint powers agreement with BACWA to create the Joint Powers Authority named the Aquatics Science Center?

**FISCAL IMPACT**

There is no obligation to fund or support the Aquatic Science Center; therefore, there is no direct fiscal impact. There may be an overall cost savings to the State Water Board as the

Aquatic Science Center's purpose is to provide a mechanism for public funds to be used in a more efficient manner and encourage multi-agency-funded collaborative efforts.

**REGIONAL WATER BOARD IMPACT**

No, not directly. The Regional Water Quality Control Boards may be requested to participate on the governing board of the Aquatic Science Center.

**STAFF RECOMMENDATION**

That the State Water Board approves the resolution authorizing the Executive Director or designee to enter into a joint powers agreement with BACWA to create the Joint Powers Authority named the Aquatic Science Center.

## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2007-

### AUTHORIZING THE EXECUTIVE DIRECTOR OR DESIGNEE TO ENTER INTO A JOINT POWERS AGREEMENT TO CREATE THE AQUATIC SCIENCE CENTER

#### WHEREAS:

1. The State Water Resources Control Board (State Water Board), the Regional Water Quality Control Boards, certain federal and State environmental agencies, and the municipalities they regulate have a consistent and continuing need for integrated and comprehensive information on water quality.
2. The San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) and its many partners have worked over two decades to establish enduring mechanisms for cooperation and collaboration regarding their mutual interests of protecting and enhancing water quality in the San Francisco Bay and its tributary watersheds.
3. Through interagency cooperation, the partners have attempted to create joint funding of collaborative endeavors to promote public agencies' full participation in regional efforts.
4. A joint powers agreement allows two or more public entities to create a separate public entity known as a "Joint Powers Authority" (JPA) that allows signatories to the joint powers agreement to more efficiently deliver services that meet the needs of the people they serve.
5. Bay Area Clean Water Agencies (BACWA) is a JPA consisting of owners and operators of publicly owned treatment works that discharge to the San Francisco Bay Estuary (Estuary). BACWA was formed to develop a region-wide understanding of watershed protection and enhancement needs through reliance on sound technical, scientific, environmental, and economic information, and to ensure that this understanding leads to long-term stewardship of the Estuary.
6. The State Water Board, Regional Water Board, and BACWA share a common goal of increasing scientific understanding of the Estuary and using that knowledge to better manage the Estuary.
7. A joint powers agreement between public agencies can appoint an agency or corporation, including a nonprofit corporation, to administer the JPA.
8. The San Francisco Estuary Institute (SFEI) is a non-profit corporation governed by a board of directors composed of Bay Area scientists, environmentalists, regulators, and representatives of local governments and industry.
9. In 1987, the U.S. Environmental Protection Agency established the San Francisco Estuary Project (SFEP), a cooperative program intended to promote effective management of the Estuary and restore and protect its water quality and natural resources; SFEP has developed a Comprehensive Conservation and Management Plan for the Estuary that enumerates recommended actions to restore and protect water quality, and CCMP

# DRAFT

May 31, 2007

designates SFEI (known until 1994 as the Aquatic Habitat Institute) to provide scientific and technical support functions for CCMP implementation.

10. In 1993, the San Francisco Bay Water Board entered into a memorandum of understanding with SFEI to administer and manage a new collaborative effort, the Regional Monitoring Program for Trace Substances (RMP), established to monitor receiving waters and provide integrated, comprehensive systematic information on water quality in the San Francisco Bay Region. The RMP is supported by funds contributed by all entities that hold waste discharge requirements issued by the San Francisco Bay Water Board to discharge waste into the Estuary.
11. A JPA established by the State Water Board and BACWA will provide an efficient mechanism for conducting scientific studies and managing scientific information needed to support the common goals of both entities, and will allow public agencies to more efficiently and easily participate in RMP. Consistent with the role it plays in administering CCMP and RMP, SFEI is uniquely qualified to efficiently and effectively administer the JPA.

THEREFORE BE IT RESOLVED THAT:

That the State Water Board delegates to the Executive Director the authority to enter into a JPA with Bay Area Clean Water Agencies on behalf of the Board, consistent with the terms of this resolution, including exhibit A (Attached), and establish the Aquatic Science Center for the purpose of providing scientific support to State and Regional Boards and municipalities.

## CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 19, 2007.

---

Song Her  
Clerk to the Board

EXHIBIT A  
JOINT POWERS AGREEMENT

## **JOINT POWERS AGREEMENT CREATING THE AQUATIC SCIENCE CENTER**

**This Joint Powers Agreement (JPA) is made and entered into by and between the State Water Resources Control Board (State Water Board) and the Bay Area Clean Water Agencies (BACWA), hereinafter “the Signatories,” for the purpose of creating an agency known as the “Aquatic Science Center.”**

**WHEREAS, each of the Signatories to the JPA is a public entity organized and operating under the laws of the State of California, and a public agency as defined in California Government Code section 6500; and**

**WHEREAS, it is the desire of the Signatories to confirm the creation of the Aquatic Science Center on behalf of its member agencies and use the San Francisco Estuary Institute (SFEI) as its administrator, effective July 1, 2007;**

**NOW, THEREFORE, the Signatories hereto do agree as follows:**

### **1. Purpose**

a. The purpose of this JPA is to establish a separate public agency to promote and deliver scientific support services to governmental and non-governmental organizations in central and northern California that foster scientific understanding needed to protect and enhance the San Francisco Estuary.

b. The JPA will serve as a fiduciary agent, with the San Francisco Estuary Institute as the administrator, to assist with the efficient delivery of financial, scientific, monitoring, and information management support functions including:

(1) Integrating, evaluating, managing, and reporting of data and information about the condition of waters and aquatic ecosystems, stressors acting on conditions, and the potential implications of alternative management responses and scenarios;

(2) Connecting science to decision-making processes involving a broad array of stakeholders, and providing a forum and mechanism to refine and use adaptive management principles in beneficial use protection and restoration;

(3) Strengthening the integration of regional monitoring information generated through a variety of efforts, and communicating relevant conclusions to a wide variety of decision-makers;

(4) Promoting and administering the Bay Area regional data center in the California Environmental Information Exchange Network and providing information technology support to the Signatories to the agreement and others; and

(5) Providing an effective mechanism for science support to other public agencies involved in environmental planning and decision-making, as well as a forum for developing and adjusting the environmental management, policy, and assessment questions that form the basis of applied research and monitoring programs in aquatic ecosystems in central and northern California.

## 2. Creation of the Authority

The Authority will be a separate public entity that shall be known as “The Aquatic Science Center.” The Aquatic Science Center is formed pursuant to the provisions of the Government Code of the State of California relating to the joint exercise of powers common to public agencies. (Gov’t Code sections 6500, *et seq.*)

## 3. Powers of the Authority

The Aquatic Science Center **shall exercise its powers** common to the parties to this agreement to do the following, solely in furtherance of its responsibilities as fiscal agent to facilitate delivery of scientific and information management support services:

- (a) To make and enter into contracts
- (b) To prepare reports and applications for the purpose of applying for and accepting grants, advances, and contributions
- (c) To employ or contract for the services in order to facilitate funding of collaborative endeavors
- (d) To receive contributions and donations of property, funds, services, and other forms of assistance from any source, including Signatory agencies
- (e) To sue and be sued in its own name
- (f) To incur debts, liabilities, or obligations, subject to limitations herein set forth

**Provided, however, that the Aquatic Science Center’s exercise of the joint powers of the Signatories is restricted to the extent required under California Government Code section 6509 and, pursuant to section 6509, the JPA will jointly exercise such powers subject to the restrictions placed on the separate exercise of such powers by BACWA.**

## 4. Governance

(a) Together, the representatives from each Signatory agency shall establish a Governing Board of Directors (Board) for the Aquatic Science Center, which at a minimum is composed of the following:

- (1) Deputy Director, Division of Water Quality, State Water Resources Control Board;
- (2) Executive Officer, San Francisco Bay Regional Water Quality Control Board;
- (3) Executive Officer, Central Valley Regional Water Quality Control Board;
- (4) Division Director, Water Division, U.S. Environmental Protection Agency, Region IX;  
and
- (5) Three directors appointed by BACWA.

(b) Upon the concurrence of a majority of the Board, other public agencies may be added as parties to this JPA, and each such party shall acknowledge its agreement to the terms hereof by executing this JPA upon authorization of its governing Board.

(c) The Board shall, at its first meeting and thereafter at its first meeting following July 1 of each succeeding year, elect a Chair and Vice-Chair from among its members. The Vice-Chair shall assume the responsibilities of the Chair in the absence of the Chair and the Chair's alternate.

(d) An alternate may be designated by a director to act in place of that director during his or her absence. Such designation shall be in writing and shall be delivered to the Executive Director.

(e) Three directors shall constitute a quorum and a simple majority vote of that quorum shall be required for action to be taken.

## **5. Meetings**

The Board shall fix the hour, date, and place for its regular meetings. All meetings of the Board shall be called, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code section 54950, *et seq.*) and with such further rules of the Board as are non inconsistent therewith.

## **6. Advisory Committees**

The Board may from time to time appoint one or more advisory committees or establish advisory entities to assist in carrying out the objectives of the Authority. The Board shall determine the purpose and need for such committees or entity(ies) and the necessary qualifications for individuals appointed to them. Any advisory committees formed shall include, as one of its members, a representative of SFEI and a representative from the Regional Water Quality Control Board.

## **7. Administration**

(a) The Board shall appoint an Executive Director under whose general supervision and control the activities of the Authority shall be conducted.

(b) Consistent with Government Code Section 6506, the Authority shall be administered by SFEI, a nonprofit corporation.

(c) The Authority shall use the procurement and other procedural rules and regulations of BACWA, with amendments as necessary.

## **8. Accounting**

(a) The Board shall establish and maintain such funds and accounts as may be required by good accounting practice.

(b) The fiscal year of the Authority shall begin on the first day of July of each year and shall end on the thirtieth day of June of the following year.

(c) The Board, or its designated representative, shall contract either with an independent certified public accountant or the Treasurer or Chief Financial Officer of any Signatory, to serve as Treasurer of the JPA and to be the depository of and have custody of funds, subject to the requirements of California Government Code sections 6505--6505.6. The BACWA auditor shall

serve as the auditor of the JPA to make an annual audit of the accounts and records of the Authority. A report thereof shall be filed as a public record with each Signatory and also with the County Auditor of Alameda. Such report shall also be filed with the California Secretary of State within twelve (12) months of the end of the fiscal year under such examination. The BACWA auditor, or other such chief financial officer designated by the Board, shall manage and control the Aquatic Science Center's property and post appropriate bond, as required by California Government Code section 6505.1.

(d) Exclusive of grants and contracts that the State Water Board may award to the Aquatic Science Center from time to time, the contribution of the State Water Board to the Aquatic Science Center shall not exceed \$50,000 in any fiscal year. Contribution is hereby defined to include monetary contributions, if any, and the reasonable value of the services of any employees of the State Water Board or the Regional Water Board loaned by it to the Aquatic Science Center.

(e) A majority of the Board shall ratify actions for:

(1) Contracts over \$50,000

(2) Annual program plans and budgets

(3) Hiring of the Executive Director

(4) Resolutions describing powers and duties of the Executive Director (or other administrator)

## 9. Term and Termination

(a) This Agreement shall remain in full force and effect until terminated **pursuant to the Bylaws adopted by the Board.**

(b) In the event that any Signatory chooses to withdraw from the Authority, then such Signatory shall notify in writing each of the other Signatories and the Aquatic Science Center of its decision. Upon withdrawal, the withdrawing Signatory shall no longer be a member of the Aquatic Science Center. In the event of the withdrawal of all member agencies except one, or upon consent of all member agencies, the Agreement may be terminated. The Aquatic Science Center shall continue to exist for one year after the Agreement has been terminated or for such time as is necessary to dispose of all claims, **in accordance with Government Code section 6511, distribute assets upon such termination as set forth in the Bylaws, in accordance with Government Code section 6512, distribute any surplus monies to the Signatories in proportion to the amounts contributed,** and perform other functions necessary to conclude the obligation and affairs of the Authority, whichever comes sooner.

## 10. Liabilities

(a) The debts, liabilities, and obligations of the Aquatic Science Center shall be the debts, liabilities, and obligations of the Aquatic Science Center alone, and not the Signatory agencies.

(b) Funds of the Aquatic Science Center may be used to defend, indemnify, and hold harmless the Aquatic Science Center, each Signatory, and any officers, agents, and employees

for their actions taken within the scope of their duties while acting on behalf of the Aquatic Science Center. Other than for gross negligence or intentional acts, the Aquatic Science Center shall indemnify and hold harmless each Signatory, its officers, agents, and employees from and against all claims, demands, or liability, including legal costs, arising out of or encountered in connection with this JPA and the activities conducted hereunder and shall defend them and each of them against any claim, cause of action, liability, or damage resulting therefrom.

**IN WITNESS THEREOF, the parties have executed this Agreement on the dates hereafter set forth.**

**BAY AREA CLEAN WATER AGENCIES**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

**STATE WATER RESOURCES CONTROL BOARD**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_